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IN THE

Supreme Court of the United States

October Term,

1977

No. 77-1230

UNITED STATES OF AMERICA,

PLAINTIFF-RESPONDENT,

VS.

LORAN L. TAYLOR,

DEFENDANT-PETITIONER

PETITION FOR CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, PLAINTIFF-RESPONDENT

VS.

LORAN L. TAYLOR, DEFENDANT-PETITIONER

Petition for Certiorari

TO: THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Comes now your Petitioner and hereby shows and Petitions the United States Supreme Court as follows:

I.

OFFICIAL REPORTS

This is a Petition to review, appeal and reverse a decision of the U.S. Court of Appeals for the 7th Circuit. The case was argued June 15, 1977, and decided January 20, 1978.

The decision is attached hereto in No. 77-1013 as Appendix "A".

Petition for re-hearing En Banc was filed by mail to the Circuit Court of Appeals on January 30, 1978. Order denying Petition for re-hearing was made and entered in the Court of Appeals on January 24, 1978.

II.

JURISDICTION OF THE COURT

The Supreme Court has jurisdiction to review by Certiorari a decision of the 7th Circuit Court of Appeals affirming a 12 Count Indictment for a claimed violation of 26 U.S. Code Sec. 7202-03.

Jurisdiction is confered by Art. III, and 28 U.S. Code Sections 1651, 2101 and 1254.

III.

PROCEDURAL HISTORY

1. Indictment filed, July 26, 1976. Not Guilty Plea entered.

2. September 3, 1976, Defendant files Affidavit of Prejudice against Trial Judge.

3. September 14, 1976, Court denies Defendant's 1st, 5th, 6th and 9th Amendment right to unlicensed Counsel of his choice, appoints Public Defender to represent Defendant and Orders that he put in a Defense for Defendant over Defendant's objection. Judge Noland also denies Motion to disqualify himself for bias and prejudice.

4. Court again denies Defendant the right to Counsel of his choice. November 11, 1976.

5. November 15 through November 18, 1976. Trial had. Gov. appeared by U.S. Attorney. Over Defendant's objection, Public Defender Voyles conducted a purported defense on Defendant's behalf as directed by the Court and over Defendant's objection.

6. November 18, 1976. Jury returned a verdict of guilty on all Counts.

7. November 23, 1976. Defendant files Motion for a new trial or Judgment of Acquittal.

8. December 19, 1976. Court denies Defendant's Motions for new trial or acquittal.

9. December 30, 1976. Court sentences Defendant to 4 years and $50,000.00 fines. Defendant files notice of appeal.

10. June 15, 1977. Case argued to Court of Appeals after briefs filed on both sides.

11. January 20, 1978. Court of Appeals decided appeal adverse to Defendant-Appellant.

12. January 30, 1978. Motion for rehearing en banc filed.

IV.

QUESTIONS PRESENTED FOR REVIEW

1. Does the accused in a Criminal Case in the U.S. District Court have the 1st, 4th, 5th, 6th and 9th Amendment right to have the assistance of Counsel of his own choosing and not the choice of his adversary, the government, in aiding, assisting, and speaking for him at his request in the presentation of oral and written Petitions and evidence in defense of the accused?
HELD, NO.

2. Where a criminal Defendant's right to represent himself has not been terminated by the trial Court can the Court force Petitioner against his will to accept standby public Defender Counsel's participation on behalf of Defense at a trial?
COURT HELD YES.

3. Is it error for a trial Judge to sit who has been the target of personal abuse and criticism from the party before him and who has been asked to step down by reason of bias and prejudice?
HELD NO.

4. Can a trial Judge deliberately inject prejudice into a trial by intimating to the jury that Defendant is bad because he wanted to have a disbarred lawyer represent him?
HELD YES.

5. Does the Trial Court have to voire dire the Jury about prejudicial newsarticles?
HELD NO.

6. Is the evidence sufficient to support a constitutional verdict that confirms to due process of law?
HELD YES.

V.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

1. Amendments 1, 4, 5, 6, 9 and 13 of the Constitution of the United States.

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

Article IX.

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment

for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

28 USC Sec. 455(a). "Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

26 U.S. Code.

Sec. 7202. WILLFUL FAILURE TO COLLECT OR PAY OVER TAX.

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with costs of prosecution.

26 U.S. Code.

Sec. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title . . . or by regulations made under authority thereof to make a return . . . who willfully fails to . . . make such a return, . . . at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both together with the costs of prosecution.

VI.

STATEMENT OF THE CASE

An Indictment was returned on July 26, 1976, in the Southern District of Indiana for 7 felony counts of willfully failing to truthfully account for and pay over federal income taxes and 3 felony counts that he did willfully fail to deduct, collect, truthfully account for any pay over to the IRS from the total taxable wages of his employees Income Taxes in violation of 26 USC 7202. Defendant was also charged with 2 counts of willful failure to file 1040 Income Tax Returns in violation of 7203.

On July 29, 1976, Defendant was arrested by the U.S. Marshal and held to answer and was brought before U.S. Magistrate Roger L. Gay in South Bend, Indiana, where Defendant posted Bond and was released.

At the time Defendant appeared for arraignment before the Court, the Court did not advise Defendant of his right to remain silent and his right to refuse to plead to the Indictment and his right to Counsel.

Defendant, at the time of Indictment, had a suit pending against the Indiana State Bar Association and the American Bar Association and certain State and Federal Judges, including Judge Noland alleging a violation of the Sherman Anti Trust Act and the Civil Rights Act and for establishing a religion in the Courts by licensing Counsel.

Defendant notified the Court that Defendant had appointed Jerome Daly as his Counsel, a person not licensed by any state or Governmental unit.

Defendant made a Motion to obtain a declaratory order from the Court that Defendant could have the assistance of Jerome Daly in his defense.

At the hearing on September 10, 1976, Defendant stated that he was unable to repre-

sent himself. The Court after hearing denied Defendant's request to have Daly represent Defendant.

Defendant then stated that he was unable to represent himself; that he would not accept the assistance of any licensed lawyer; and that if he could not have his own Counsel represent him he could not take any part in the proceedings because he was unable to defend himself because he simply did not know how.

The Court on September 10, 1976, appointed Public Defender, James Voyles, to defend and ordered him to familiarize himself with Defendant's affairs and advised Defendant that he was ordering Voyles to put in a defense and to bring out facts on behalf of Defendant whether Defendant wanted this done or not. Standby Counsel consented to do this and did do this.

Defendant refused to consent to Voyles representing him for any purpose.

Defendant has never been, to this day, legally arraigned with the assistance of Counsel of his choice or any Counsel at all.

The record shows throughout that the Court tried to force Bar Attorney, James Voyles, upon Defendant during the trial.

The Court even went so far on November 15, 1976, at to order that Dr. Taylor could not talk to any of his friends, including Jerome Daly out in the hall outside the Courtroom at a recess. This order was enforced by the Marshal who accompanied Dr. Taylor to the men's room. See Court file pages No. 141 and 142 and the transcript Vol. 1, page 50 at bottom.

The objective was to separate Dr. Taylor from his friends and to force him to accept Voyles against his will.

See the transcript of the testimony on page 346 when the government called one Dorothy Sharp, IRS Agent with the audit division to give her opinion as to the evidence offered on certain computations, additions and conclusions of the figures in evidence.

Starting on page 350, standby Counsel, over the objection of appellant, started objecting to the foundation that was laid for her opinion. This was prejudicial to the Defendant's side of the case. The government attorney and the expert witness had the years and the figures confused and mixed up; so mixed up that no jury could figure out what she was testifying to. All Public Defender Voyles did was to straighten out the error made by the U.S. Attorney.

See page 350, Public Defender Voyles showed the U.S. Attorney how to present this expert evidence. He states: "The proper foundation for the government to lay to elicit the testimony she is about to give on gross income would be to have the government attorney go through the books and records that he submitted to her and then have her indicate which ones she used in making the computations."

Later, at 359, the witness over Voyles objection answered:

"A. For 1970, second quarter and 4th quarter, the total F.I.C.A. tax due is $264.00. Total Withholding Tax, Federal Income Tax, $25.

For 1971, all four quarters, the total F.I.C.A. tax due is $594.88. The total withholding tax due, $764.40.

For 1972, the total F.I.C.A. tax due, $528.32. Withholding tax due is $641.20. For 1972, Federal unemployment tax, $162.56."

See T-360 where Public Defender Voyles objected that the figures were not broken down to specific figures for specific quarters. See T-360 through 363 where Voyles argued with the Court and Government Attorney and finally got them to withdraw the Exhibit the computations were made on and recessed the case to the following morning to get the figures clear for the jury to aid a conviction. The following occurred, T-363:

"Mr. Foster: For the purpose of expediting the matter, the government will at this time withdraw the exhibit and will prepare another one, and will ask to terminate the examination of this witness at this time.

THE COURT: You can complete the examination and put her back on for purpose of offering another exhibit tomorrow."

DEFENDANT TAYLOR: May I comment? I didn't instruct Mr. Voyles to take part in this discussion. Only Mr. Daly may take part in such discussion on my behalf."

On November 15, 1976, the Indianapolis News carried an article to the effect that when arrested Dr. Taylor was armed with a gun which was taken from him by the Marshal. Nothing could have been further from the truth as the Marshal's records show. Dr. Taylor turned himself in at the Marshal's office and was unarmed. This article was inserted by the IRS to prejudice the Jury against Dr. Taylor regardless of the facts.

See the transcript Vol. II. The trial proceeded all the way with Dr. Taylor making this or a similar statement as to his position therein:

> "Your Honor, I don't feel qualified to object. It is my desire to conduct my own defense in my own way. However, I'm stopped from doing so by the Court, against my 6th Amendment rights. I am not taking any part in the proceedings

> because I am unable. I am unable because I do not know how. I have been denied the assistance of my counsel, Jerome Daly, who could help me. Therefore, I have nothing to say because I do not know what to say, except I do not waive any of my rights." R-138.

At one point in the trial in the presence of the Jury the Court told the jury that Dr. Taylor was insisting on being represented by a disbarred attorney from Minnesota and that he had ruled that this was not permissible. All of this reference to bad associates, etc., was done to implant in the minds of the jury that Dr. Taylor was associating with a bad person and that he was guilty by association, the trial Court assisting in the prejudice.

The record shows that at no time did the government have any valid search warrant to obtain any of the private papers or forms they claim that Defendant should have given up and filed.

The record shows further that at no time did the government have any judgment that could possibly compel Defendant to deliver over money consistent with due process of law to the government.

Defendant was not in a state of slavery to the government because he had been convicted of no crime.

Further statement of facts will be pointed out in the argument.

ARGUMENT

1. DOES THE ACCUSED IN A CRIMINAL CASE HAVE THE RIGHT TO THE ASSISTANCE OF HIS MINISTER AND COUNSEL OF HIS OWN CHOICE WHO IS NOT LICENSED BY ANY GOVERNMENTAL UNIT BUT ONLY BY DEFENDANT?

HELD NO.

At the very first appearance before the Court, Defendant Taylor advised the Court that he had his own Counsel who was not licensed by any State or Governmental unit, but only by himself.

Defendant had commenced a suit for a violation of the Anti-Trust Laws and the Civil Rights Act against the American Bar Association and the Indiana State Bar Association for violating the Anti-Trust Laws and for establishing a religion under the guise of licensing Lawyers to practice Law.

See the copy of the Anti-Trust suit in the file. See also the copy of the suit brought on part of the same theory by the Justice Department over two years after Defendant had started his suit against the American Bar Association which is also in the file.

Therefore, it is entirely reasonable that Defendant should not want any licensed Lawyer to defend him in trial. This decision is further fortified by the statement of the U.S. Supreme Court in Faretta vs. California, 422 US 806, as follows:

> In the American colonies the insistence upon a right of self-representation was, if anything, more fervent than in England.
>
> The colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers. When the Colonies were first settled, "the lawyer was synonymous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions." This prejudice gained strength in the colonies where "distrust of lawyers

> became an institution." Several Colonies prohibited pleading for hire in the 17th century. The prejudice persisted into the 18th century as "the lower classes came to identify lawyers with the upper class." The years of Revolution and Confederation saw an upsurge of anti-lawyer sentiment, a "sudden revival, after the War of the Revolution of the old dislike and distrust of lawyers as a class." In the heat of these sentiments the Constitution was forged.

Therefore, on August 19, 1976, Defendant advised the Court that he did not want any licensed lawyer as his representative. He said he had his own lawyer and counsel, Jerome Daly, a former member of the Bar of Minnesota.

The Court advised Defendant that he could not have Daly, but would hold a hearing on the question and proceeded to arraign Defendant without Counsel.

The Court held a hearing on the question of Counsel on September 10, 1976, and although it appeared that the representation by Daly would be in a peaceable and orderly manner, the Court denied Taylor the right to have Daly. At that time Taylor insisted that he would not accept any licensed Counsel; and that further he was unable to defend himself because he did not know how, that he would take no part in the trial because he did not know what to say and so he would have nothing to say.

Defendant did not know how to cross examine witnesses, make an opening statement, objections, trial motions, he did not know what trial strategy to use nor when to use it, he did not know how to make a motion for a judgment of acquittal nor did he know how to make a closing argument. In short, Defendant knew nothing about how to conduct the trial. Defendant was unable to defend himself throughout the entire trial and stated so.

Over Defendant's objection the Court appointed one James Voyles, as standby Counsel. Voyles admitted that he was a member of the Indiana State Bar Association and was on the Board of Managers of the Indianapolis Bar Association.

Voyles' posture in the case was as an unwanted Counsel throughout the entire proceedings. Defendant objected to everything Voyles tried to do.

Defendant Taylor consistently, throughout the entire trial, took the position that he wanted to conduct his own defense in the case. He said, "I want to have my own spokesman, Jerome Daly, to speak for me. I want to conduct my own defense through my own proxy or spokesman. This right has been denied me. I am therefore not going to take any part in these proceedings because I am unable. James Voyles does not represent me and is given no authority by me whatsoever to represent me or do anything for me. He is an unwanted Counsel. I have no statements to make because I do not know what to say, except I do not want to waive any of my rights. It is not my defense that is being interposed." Voyles was ordered to and did attempt to defend from the outset over objection. In the constitutional sense there was no trial at all.

It is a simple, primitive, legal maxix that anything which a citizen can lawfully do for himself, he may lawfully delegate to another by power of attorney to act in his behalf.

See USA vs. Stockheimer, 385 F.Supp 979 (W.D.Wis.1974) where Judge James E. Doyle allowed two disbarred lawyers, Gordon Peterson and Jerome Daly, to act as Counsel for Defendant Stockheimer in a criminal trial. Judge Doyle went on to state:

The question arises whether a defendant in a federal criminal case who has effectively waived his Sixth Amendment right to the assistance of counsel nevertheless enjoys a right, under the due process clause of the Fifth Amendment or under any other provision of the Constitution of the United States, to the assistance of a person other than "counsel," as "counsel" is used in the Sixth Amendment. I hold that there is no such federal constitutional right. For constitutional purposes, it is sufficient to guarantee "counsel," as the term is used in the Sixth Amendment.

While the Constitution does not guarantee this defendant the right to assistance by a person other than "counsel" as "counsel" is used in the Sixth Amendment, neither does it forbid him such assistance, unless the due process clause of the Fifth Amendment should be construed so as to protect the defendant from what may or may not prove to be his folly. In my view, the Fifth Amendment should not be so construed. Those experienced in the work of the courts, including the conduct of criminal cases, are likely to consider it foolish indeed for a defendant to undertake to defend himself or for a defendant to enlist the assistance of persons other than those licensed to practice law, but, if the choice is made knowingly, intelligently, and voluntarily, I do not believe that the Constitution should be read to forbid it.

The defendant has filed motions for orders "to allow Gordon Peterson . . . to be and act as Counsel and spokesman," and "declaring that Defendant has the right to have Jerome Daly . . . accompany and speak for Defendant. . . ." I decline to grant such motions and to enter such orders. I prefer to treat

the matter as follows: that by filing notices that he has "appointed" or "licensed" them, this defendant has announced his intention to avail himself of the assistance of Gordon Peterson and Jerome Daly in the defense of this case; and that defendant has sought to learn from the court, in advance of trial, whether the court will forbid him to do so. I consider that in the absence of any constitutional or federal statutory provision compelling me either to forbid or not to forbid the defendant such assistance, I may exercise my discretion in the matter.

Clearly, this defendant entertains a massive distrust of the organized bar, and no licensed member of the bar of this state or of another state enjoys his trust. With all his options known to him and understood by him, he has decided to risk conviction and possible imprisonment for three years without the assistance of a person licensed to practice law. But he has also decided not to risk these consequences in a trial in which he defends himself with no assistance. He has decided to risk these consequences in a trial in which he has the assistance of Gordon Peterson and Jerome Daly.

Whether it has ever been so I do not know, but it is plain that this is a time in the history of the United States in which the members of various groups on the right and on the left, and members of racial and religious minorities, are experiencing a strong sense of alienation and are deeply suspicious and distrustful of our institutions, including the courts and the organized bar. Obviously, those who have accepted the responsibility for the management and operations of these institutions are not free to abandon them or to subvert or distort them in response to such suspicion, distrust, and hostility. To abandon, subvert, or distort the insti-

tutions would be destructive of many values, and the odds are heavy that it would fail, in any event, to remove the suspicion, distrust, and hostility. For example, in the present case, if the defendant is not forbidden the assistance of Gordon Peterson and Jerome Daly, but if defendant is convicted following the procedures prescribed by law, it seems idel to suppose that his sense of alienation will be the less.

Nevertheless, it seems wiser not blindly to ignore the existence of the suspicion, distrust, and hostility widely harbored against many institutions, including the courts, but rather to make some accommodations which may tend to dissipate these attitudes in some degree among groups and which involve no significant distortions of the process or unmanageable problems.

I have concluded that in the defense of this criminal prosecution initiated against him by the government, this defendant should not be flatly forbidden the assistance of persons not licensed to practice law.

Having reached this conclusion, I could have reached with ease the further conclusion that defendant should not be forbidden the assistance of a carpenter or a farmer, if preliminary inquiry indicated that the participation of the particular carpenter or the particular farmer did not appear to threaten the orderly conduct of the trial. But this defendant has compounded the difficulty. With complete sincerity, I am willing to assume, he has "appointed" or "licensed" to assist him two persons who have had legal training and experience, but whom the Supreme Court of their state has declared unfit to practice law. With great reluctance, I have concluded that from the viewpoint of a defendant in a criminal case, there is no rational distinction to be made between forbidding

him the assistance of a carpenter or a farmer whom he trusts and forbidding him the assistance of a disbarred lawyer whom he trusts.

I have concluded that in the particular circumstances of this case, defendant should not be forbidden the assistance of Gordon Peterson.

Thereafter, Peterson was prosecuted by the Wisconsin State Bar Association, through their agent the U.S. Attorney in Madison, Wisconsin, for the unlawful practice of law in the Federal Court. The 7th Circuit reversed the conviction on January 20, 1977, in No. 75-2093 and stated in part:

> The Government frames the issue this way: "Was the offense of practicing law without a license within the ambit of Section 256.30(1) and (2), Wisconsin Statutes, and incorporated by Sections 7 and 13, Title 18, U.S.C., clearly established upon the record, amply supported by evidence, and sufficient to sustain the conviction . . .?"
>
> * * * * * *
>
> We hold that the Wisconsin penal statutes are not applicable to the practice of law in the federal courts in Wisconsin, but we must do so for reasons argued by neither party.

See Webster's First Edition of an American Dictionary of the English Language, published in 1828, adopted by our Congress, State Legislatures and Courts as a "primary source for the original meaning of Constitutional terms as used in the Founding Years of this Nation," the word "counsel" is given ten separate definitions in the following order:

COUNSEL, n. . . .

1. Advice; opinion, or instruction, given upon request or otherwise, for directing the judgment or conduct of another; opinion given upon deliberation or consultation. Every purpose is established by counsel. Prov. xx. Thou hast not hearkened to my counsel. 2 Chron. xxv.

2. Consultation; interchange of opinions. We took sweet counsel together. Ps. lv.

* * * * * *

10. Those who give counsel in law; any counselor or advocate, or an number of counselors, barristers or erjeants; as the plaintiff's counsel, or the defendant's counsel. In this sense, the word has no plural; but in the singular number, is applicable to one or more persons.

Since the words "counselor," "advocate," "barrister," "lawyer," and "attorney-at-law" are also defined separately, logic would say that if our Founding Fathers wanted to limit the assistance to the accused, they would not have used a general term "counsel" but would have, instead, called out the specific type of lawyer they wanted. They did not.

Webster defines the word "lawyer" in 1828 as follows:

LAWYER, n. . . .

One versed in the laws, or a practitioner of law; one whose profession is to institute suits in courts of law, and to prosecute or defend the cause of clients. This is a general term, comprehending attorneys, counselors, solicitors, barristers, serjeants and advocates.

The Judiciary Act of 1789 (1 Stat. 73, ¶35) states:

> In all courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said court . . . shall be permitted to manage and conduct causes therein.

Then, it is easy to see that the word "counsel" as used in the Sixth Amendment was not to be limited to the "licensed lawyer" of today. History proves that!

The Supreme Court of the United States says that the word "counsel" is not limited to mean a "lawyer" or some one "licensed" to practice law by a State. See Faretta v. California, 43 LW 5004, 5008, ___US___, 95 SCt 2525, 45 OEd 2d 562 (1975):

> . . . The first lawyers were personal friends of the litigant, brought into court by him so that he might "take 'counsel' with them" before pleading. 1 Pollack & Maitland, History of English Law 211 (1909). . . .

The Colonial chapters did not limit "counsel" to that of a "licensed" lawyer, to wit:

The Fundamental Constitution for the Province of East Jersey (1683) states:

> . . . And in all courts persons of all perswasions [sic] may freely appear in their own way, and according to their own manner, and there personally plead their own causes themselves, or if unable, by their friends, no person being allowed to take money for pleading or advice in such cases.

The Massachusetts Constitution of 1780 declared that

> every subject shall have a right to . . . be fully heard in his defense by himself or his counsel, at his election.

The Independent Republic of Vermont in its Constitution of 1777 declared simply that

> in all prosecutions for criminal offenses, a man hath a right to be heard, by himself and his counsel. . . .

See also Faretta vs. California, 422 US 806, 45 L.Ed. 2d 562, 95 S.Ct. 2525--422 US at 831 where it is stated:

> "For example, Thomas Paine, arguing in support of the 1776 Pennsylvania Declaration of Rights, said;--"Either party . . . has a natural right to plead his own cause; this right is consistent with safety, therefore, it is retained; but the parties may not be able . . . therefore the civil right of pleading by proxy, that is, by a Council, is an appendage to the natural right of self representation. . . ." Thomas Paine on a Bill of Rights, 1777, reprint in 1 Schwartz 316.

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor." Although not stated in the Amendment in so many words, the right to self-representation--to make one's own defense personally--is thus necessarily implied by the structure of the Amendment. The right to defend is given

directly to the accused; for it is he who suffers the consequences if the defense fails.

The counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistance, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant--not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; of the personal character upon which the Amendment insists. . . .

The Court is also requested to take Judicial notice of the Code of Professional Responsibility and the Disciplinary Rules and the Canons of Ethics of the American Bar Association and the Indiana State Bar Association and more especially all the "cases of Conscience" in the Supreme Court reports of the States in the Union.

Religion has been defined. See Welsh vs. U.S. 398 US 333. "Religion" is a sincere belief, not necessarily a belief in God, but binding upon the conscience, a belief or philosophy which fills the same place as a belief in God fills in the life of an orthodox religionist.

It cannot be doubted that the Bench and Bar has established a "Nomocanonical Religion" based on the nomocanons of the Bench and Bar under the management of the American Bar Association and hence the Disciplinary Rules, the Code of Professional Responsibility and the Canons of Ethics along with the "Cases of Conscience" of the Supreme Courts constitute

a law respecting the establishment of Religion in violation of the First and Fourteenth Amendments.

The Bar Associations have surfaced with an old religion which dates back to at least 500 A.D. if not before. See Black's Law Dictionary which defines it as follows:

> NOMOCANON. (1) A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180. (2) A collection of the ancient canons of the apostles, councils, and fathers, without regard to imperial constitutions. Such is the nomocanon by M. Cotelier. Enc. Lond.

There can be little doubt that the First, Fourth, Fifth, Sixth, and Ninth Amendments were violated in this denial of Defendant's right to Counsel.

A state or federal Court which arbitrarily refuses to hear a party by Counsel employed by and appearing for him in any case, civil or criminal, denies the party a hearing and therefore denies him due process of law in the constitutional sense. See Reynolds vs. Cochran, 365 US 525 and Powell vs. Alabama 287 US 45.

Regardless of what the trial Court said in its memo about Defendant, he did not take any part in the trial because he was not able to do so. There was nothing presented on Defendant's behalf. Faretta vs. California states clearly that the public defender could not be forced on Defendant and ordered to take part on Defendant's behalf.

Defendant was denied the right to have his counsel present the case and was denied

the right and opportunity to present a defense as is guaranteed by the First, Fifth and Sixth Amendments.

Therefore, on this ground alone Defendant is entitled to a new trial.

2. IT WAS ERROR TO ORDER THE PUBLIC DEFENDER TO DEFEND THE CASE AND ATTEMPT TO REPRESENT DEFENDANT OVER HIS OBJECTION.

As is shown from the statement of facts the Court forced the Public Defender upon Defendant and then ordered him to defend over the objection of the Defendant.

Defendant had never waived his right to conduct his own defense nor had the Defendant requested the help of standby counsel. The Court never ordered that a termination of Defendant's right to self-representation was necessary.

Faretta vs. California, 422 US 806, holds without reservation that the accused has the right to captain his own defense and that he cannot have an unwanted Counsel forced upon him.

The 7th Circuit Court's opinion is clearly in error. As in pointed out in the statement of facts, the standby Counsel helped the government correct errors made by the IRS accountant and in fact insured that a dismissal of all of the felony counts as a matter of law could not occur. See the previous statement of facts.

Defendant is an independent party to this adversary proceeding. The Court cannot place an extra prosecutor on his side of the table against his wishes and then call it Justice.

The burden of proof was on the Government. Defendant has a right to stand mute and say nothing during the trial and merely appeal the denial of his fundamental right to Counsel.

The Appeals court overlooks the simple fact that this was a grossly unfair proceeding. The Judge, Standby Counsel and the U.S. Attorney were all conducting the prosecution against Dr. Taylor.

Standby Counsel's was ordered to participate in the trial by the Court.

This interfered with Taylor's right to present his own Defense personally and to his prejudice. Although no prejudice need be shown it is demonstrated in the record as follows:

If Standby Counsel would have kept out of the examination of expert IRS Accountant Witness, Dorothy Sharp, Taylor would have been entitled to a Judgment of acquittal on the 10 Felony Counts.

She had lumped a total figure for several counts for 3 years not stating specifically which figure or part of any figure belonged to any one quarter of any one year as charged in the Indictment. After all the government had to prove its case beyond a reasonable doubt and the jury could not guess or speculate at the evidence. See the transcript from pages 350 to 365. All standby Counsel did was correct the errors made by the government by their crucial witness. Without her computations and correct computations directed specifically to each Count in the Indictment, the government had no case. After standby Counsel straightened the matter out, the government withdrew the computation exhibit and the witness; called her back the next morning and went forward with what they claimed were correct figures. If they did not do this Dr. Taylor was entitled to a directed verdict of acquittal. The activity

of standby Counsel Voyles presented Dr. Taylor's acquittal and aided his conviction, all over Dr. Taylor's objection.

The Court's opinion overlooks the obvious facts in this part of the record.

The Court erred in its opinion when it stated:

> "We think the district court's observation is fully supported by the record, which makes clear that Taylor's objections to appointed Counsel's efforts were not based on any substantive or tactical considerations but solely on the ground that counsel was not the man of Taylor's choice."

Standby Counsel's tactics lost the case for Taylor.

See Faretta:

> "The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. . . . for, in a very real sense, it is not his defense."

Taylor is interested in his constitutional right to captain his own ship and have Counsel of his own choice and not have Counsel forced upon him to his detriment. Faretta clearly states:

> "No person charged with a criminal offense can have counsel forced upon him against his will."

This principle of law is exactly what was violated here. Taylor's right of self representation was never terminated for any reason. The Court's opinion overlooks this.

3. IT WAS ERROR FOR THE TRIAL JUDGE TO PRESIDE AT THE TRIAL WHEN HE HAD BEEN THE TARGET OF PERSONAL ABUSE AND CRITICISM FROM THE PARTY BEFORE HIM AND HAD BEEN ASKED BY THAT PARTY TO STEP DOWN UPON THE GROUNDS OF BIAS AND PREJUDICE.

The Court record on page 28 shows that Defendant filed an affidavit of prejudice and the Anti-trust suit against Judge Noland and others including the American Bar Association and the Indiana State Bar Association. The Justice Department admits the suit has merit.

Judge Noland is not only a Defendant in this suit but he is the target of personal abuse or criticism from the Defendant who is a party before him.

See 28 USC 455(a):

> "Any Judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

See Withrow vs. Larkin, 43 Led.2d 712, April 15, 1975, where the U.S. Supreme Court stated as follows:

> "Concedely, a fair trial in a fair tribunal is a basic requirement of due process. . . . Not only is a biased decision-maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness. . . in pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary

interest in the outcome and in which he has been the target of personal abuse or criticism from the party before him."

See also Section 40 of Magna Charta:

"To none will we sell, to none will we deny, or delay, right or justice."

It takes no argument to conclude that Judge Noland was not only a Defendant but was and is in sympathy with the State Defendants named in the anti-trust suit against the various Bar Associations.

The law suit is well founded. The American Bench and Bar has set up a monopoly to sell justice in the Federal Courts where it cannot be monopolized at all. There is no criminal statute prohibiting the unlawful practice of law in the Federal Courts. See USA vs. Peterson (7th Circuit January 20, 1977)

Therefore, a new trial should be granted because Judge Noland erred in refusing to disqualify himself where other Judges were available.

4. THE COURT COMMITTED PLAIN ERROR BY CONDUCTING A TRIAL VICIATED WITH PREJUDICE.

Due process of law in the constitutional sense was denied. The trial Court allowed a news article to go which contained a very prejudicial story about Defendant having been arrested with a gun and having burned patient's records after he was indicted. The Court refused to voire dire the Jury about this article. The Court continued to make disparaging remarks all during the trial about Defendant's insisting on his own counsel to defend him and injected on several occasions that Defendant wanted a disbarred lawyer to represent him to cast Defendant in a bad light before the jury.

All of this plus the fact that Defendant had to try to fight off standby Counsel and the Court during the trial created an atmosphere of prejudice and insured that Defendant could not get a fair trial.

Defendant did not burn his records and had no weapon on him when he was arrested and the Court and IRS know this. Yet they let this story go without questioning the Jury as to its prejudicial effect contrary to the rule in the 7th Circuit.

Defendant's side of this case has not been presented. There has been no trial.

5. THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT THE VERDICT.

1. There was no competent evidence to show that Defendant willfully failed to truthfully account for and pay over to the Internal Revenue Service any income or FICA taxes due and owing to the USA for any of the quarters in question.

Under the law, Defendant owed the government nothing.

2. On Counts VIII through X there is no competent evidence that Defendant willfully failed to deduct, collect, truthfully account for and pay over to the Internal Revenue Service any withholding taxes of FICA taxes as alleged.

3. As to Counts XI and XII there is no evidence that Defendant violated any law in willfully and knowingly failing to make an income tax return to the District Director.

Defendant is charged with, "willfully, and with a bad purpose in mind" of failing to do all of the things in question. Here there is no victim, except the Defendant.

See Amendments 1, 4, 5, 6, 9 and 13 of the Constitution of the United States previously set forth.

The 4th and 5th Amendments privilege against self incrimination applies not only to oral testimony, but to communications in documentary form as well. See Boyd vs. U.S. 116 U.S. 616 and Schmerber vs. California, 384 U.S. 757.

The 4th Amendment provides:

> "The right of the people to be protected in their persons, houses and papers and effects shall not be violated."

This privilege applies to one's private papers even though they were actually written by another person. See Wilson vs. U.S., 221 U.S. 361.

The government complains that Defendant did not send in certain forms that had been, or were to be, completed by himself. These were his private papers. The government admittedly had no search warrant to get these papers.

Defendant cannot be prosecuted to failing to give up his constitutional rights. If the income tax statutes conflict with the 1st, 4th and 5th Amendments, then this is a situation to be remedied by an amendment to the Constitution and not by judicial and administrative decision and rulings.

Furthermore, these returns setting forth the information in the 12 charges in the Indictment are required to be certified under penalties of perjury that they are true, correct and complete. Complete means perfect. True and correct means without error.

The burden of proof never shifts to Defendant. There is no showing whatsoever that Defendant was in a position at any time to comply even if the government had a search warrant which they did not.

The short and simple answer is that there is no proof of any conduct that is a public offense against any valid law in this record.

The government has the burden of proof. There is no proof that Defendant had sufficient records to comply even if he did have to fill out the forms in question.

Further there was no evidence of willfullness at all in the case.

Had Defendant been allowed his constitutional right to the assistance of his own counsel there was nothing that could not have been very easily explained.

Therefore, the Judgment should be reversed in its entirety as there is nothing to show any crime committed by Defendant.

CONCLUSION

The fundamental concept of "LIBERTY" embodied in the 5th Amendment embraces the LIBERTIES guaranteed by the 1st, 6th and 9th Amendments, which declare Congress shall:

1. Make no law respecting an establishment of religion, or prohibiting the free exercise thereof;
2. or abridging the freedom of speech, or of the press;
3. or of the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

It, "LIBERTY", also embraces the 6th amendment right of the accused; "the accused shall enjoy the right to have the assistance of Counsel for his defense".

"LIBERTY" also embraces Amendment 9; "The enumeration of the Constitution, of certain rights, shall not be construed to deny others retained by the people."

Freedom of conscience and freedom to adher to such religious organization, association of Ministers and Counsel as the individual may chose cannot be restricted by law.

Certainly, the public may be protected from fraud, champerty and nuisance committed upon the public by any Counsel or Minister and from misconduct in Court by Contempt proceedings.

But, as is stated in Cantwell et al v. Connecticut, 310 U.S. at 307; "But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a "religious" cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution.

Here there was a gross breach of discretion to deny Petitioner, Taylor, the right to enjoy the assistance of "His Counsel", Jerome Daly. There was no evidence to show that the assembly was going to be any thing but a peaceably assembly before the Court in the defense of these criminal charges.

The trial Court erred further in forcing standby Counsel upon Petitioner Taylor at the trial and by Ordering standby Counsel to put in a defense over Taylor's objection. All standby Counsel did was correct the erros made by the government in putting in their case. The government's expert witness, an IRS Accountant had her figures all mixed up, so mixed up that a directed verdict of acquittal would have granted if they were left to stand, until the mixup was straightened out by standby Counsel.

This forcing of standby Counsel upon Petitioner Taylor at the Jury Trial was a direct violation of his 6th Amendment and 1st Amendment right to Counsel and defend the case in the nammer he saw fit.

The substantive Constitutional errors were further compounded by the failure of the Court to voire dire the Jury about the prejudicial news article of Dr. Taylor having been arrested with a gun in his possession and burning his patients recrods. Further prejudice was injected directly by the trial Judge in refering to Taylor's friend Daly as a "Disbarred Lawyer", which issue had no place before the Jury at all.

Further, the Trial Judge should have disqualified himself for bias and prejudice.

In any event, the evidence showed no public offense was committed or proven.

There has been no trial in the constitutional sense.

WHEREFORE, your Petitioner, Loran L. Taylor prays that a WRIT OF CERTIORARI issue from this Court directed to the Court of Appeals and respondent commanding that the record be certified to the Supreme Court of the United States to the end that the Judgment of the Court of Appeals and the District Court below be reversed and that a Judgment of Acquittal on all charges, or any of them, be entered or in the alternative a new trial.

RESPECTFULLY SUBMITTED,

Loran L. Taylor

LORAN L. TAYLOR, PRO SE
3208 Rue Renoir
South Bend, Indiana 46615

Subscribed and sworn to before me
this _____, 1978

_____
Notary Public

APPENDIX "A"

In the
United States Court of Appeals
For the Seventh Circuit

No. 77-1013
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LORAN L. TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. IP 76-111-CR—**James E. Noland**, *Judge*.

ARGUED JUNE 15, 1977—DECIDED JANUARY 20, 1978

Before FAIRCHILD, *Chief Circuit Judge*, PELL and BAUER, *Circuit Judges*.

BAUER, *Circuit Judge*. Following a jury trial, defendant-appellant Taylor was convicted of twelve counts of federal tax evasion under 26 U.S.C. §§ 7202-03 on the basis of evidence showing that he failed to file personal income tax returns and to truthfully account for money withheld from his employee's wages for payment of Social Security taxes. On appeal, Taylor contends that the evidence was insufficient to support his convictions, and that the district judge erred by not disqualifying himself from presiding over the trial, by not dismissing the indictment on the ground that Taylor had not been

timely arraigned, by denying Taylor's request that he be represented by unlicensed counsel, by permitting standby counsel to participate in the trial over Taylor's objection, by informing the jury that Taylor had asked to be represented by a disbarred attorney, and by not allowing Taylor to address the jury to refute allegedly prejudicial publicity printed in the course of the trial. We find none of Taylor's claims meritorious and affirm his convictions for the reasons noted below.

I.

With respect to Taylor's contention that the evidence presented at trial was insufficient to support his convictions, extensive discussion is unwarranted. Suffice it to say that Taylor's argument is frivolous, and that the evidence of his guilt is not only sufficient, but overwhelming when viewed in the light most favorable to the Government. *Glasser v. United States*, 315 U.S. 60, 80 (1942).

II.

Taylor's next contention—that the district judge should have disqualified himself for bias because he was named as a party defendant to an antitrust suit brought by Taylor against the American Bar Association and virtually every federal judge in the nation—is likewise without merit and deserves little comment. We hold that, for the reasons noted in *United States v. Corrigan*, 401 F. Supp. 795, 797-98 (D. Wyo. 1975), the district court correctly ruled that the conclusory allegations of bias contained in Taylor's affidavit of prejudice presented no legally sufficient basis for recusal under 28 U.S.C. § 144.

III.

Taylor's next argument—that the district court erred in refusing to dismiss his indictment on the ground that he had not been timely arraigned—merits only slightly more expansive treatment. Noting that he was arrested

and taken before a United States Magistrate for admission to bail on July 29, 1976, but not arraigned until August 19, 1976, Taylor claims that the Government violated the ten-day time limit specified in the Speedy Trial Act for arraigning defendants charged by means of an information or indictment. According to Taylor, the mere fact that his arraignment occurred more than 10 days after his appearance before a United States Magistrate constituted a violation of the Act, which provides in relevant part:

> "The arraignment of a defendant charged in an information or indictment . . . shall be held within ten days from the filing date . . . of the information or indictment, or from the date the defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs." 18 U.S.C.A. § 3161(c) (Cum. Supp. 1977).

What Taylor's argument mistakenly assumes is that his appearance before the United States Magistrate at South Bend, Indiana for admission to bail triggered the running of the ten-day arraignment limit. Such was not the case for the indictment was pending in the United States District Court for the Southern District of Indiana, not in the Northern District which encompasses South Bend, the site of his arrest. As is clear from the face of the statute, the time limit for arraigning Taylor did not begin to run until he had been ordered held to answer "and ha[d] appeared before a judicial officer of the court *in which* [*the*] *charge* [*was*] *pending*." 18 U.S.C.A. § 3161(c) (Cum. Supp. 1977) (emphasis added). Taylor's actual arraignment before Judge Noland of the United States District Court for the Southern District of Indiana was his first appearance before any judicial officer of that court. Accordingly, his arraignment was held within the time limit imposed by the statute.

IV.

We turn now to Taylor's principal claims on appeal, namely, alleged infringements of his constitutional rights under the Sixth Amendment. Taylor's first claim

is that the Sixth Amendment entitled him to choose as his counsel one Jerome Daly, a person unlicensed to practice law. Taylor contends that the district court erred in holding that he was not entitled to unlicensed counsel and in denying Daly leave to represent him at trial. The second of Taylor's Sixth Amendment claims is an alleged violation of his right to self-representation as enunciated in *Faretta v. California*, 422 U.S. 806 (1975). According to Taylor, once he had been denied Daly's assistance and had elected to defend himself at trial, it was error for the district court to permit a licensed attorney appointed as standby counsel to participate in the trial over Taylor's objection.

In support of his first contention that the Sixth Amendment's guarantee of the assistance of counsel includes the right to representation by persons not licensed to practice law, Taylor relies largely on some dictum from *Faretta* indicating that it was not an uncommon practice for colonial defendants to be represented at trial by personal friends who had received no formal training in the law. See 422 U.S. at 820 n.16. Taylor draws from the history of lay representation and the deep-seated colonial distrust of lawyers noted in *Faretta* the conclusion that the Founding Fathers must have deliberately employed the generic term "counsel" in the Sixth Amendment in order to encompass persons not licensed to practice law. In any event, says Taylor, Daly had received legal training and, notwithstanding the fact that he was disbarred from the practice of law in Minnesota,[1] was qualified to represent Taylor at trial. Accordingly, Taylor concludes that the district court erred in refusing him Daly's assistance on the ground that Daly was not licensed to practice law in any State, as required by Rule 1 of the Local Rules of the United States District Court for the Southern District of Indiana. We disagree.

Although we are not unmoved by the sincerity of Taylor's plea for help of his friend, we cannot agree that, in guaranteeing criminal defendants the right to

[1] For a statement of the grounds for Daly's disbarment, see *In re Daly*, 291 Minn. 488, 189 N.W.2d 176 (1971).

the assistance of "counsel" for their defense, the Sixth Amendment creates a constitutional right to representation by persons unlicensed to practice law. As we have indicated in an earlier opinion, Taylor's reliance on *Faretta* is simply misplaced. That case "does not hold that a defendant has the freedom of choice to select a nonlicensed person as his counsel" but merely that a defendant has "a constitutional right to defend himself and . . . proceed without counsel." *United States v. Peterson*, 550 F.2d 379, 381-82 (7th Cir. 1977). Moreover, Taylor's historical and linguistic analysis has been repudiated by every court that has considered the issue of whether the right to the assistance of "counsel" includes the right to representation by persons unlicensed to practice law. E.g., *United States v. Grismore*, 546 F.2d 844, 847 (10th Cir. 1976); *United States v. Whitesel*, 543 F.2d 1176, 1177-81 (6th Cir. 1976); *United States v. Kelley*, 539 F.2d 1199, 1201-03 (9th Cir. 1976); *Turner v. ABA*, 407 F. Supp. 451, 477-78 (E.D. Wis. 1975). Indeed, the question is so well settled by now that further discussion seems to us fruitless. We reiterate our prior holding in *United States v. Jordan*, 508 F.2d 750, 753, (7th Cir. 1975), that Taylor was not constitutionally entitled to the assistance of unlicensed counsel and that the district court committed no error in refusing the request that Daly be allowed to represent Taylor at trial.

More extensive discussion is necessary for the second of Taylor's Sixth Amendment claims, namely, that the district court infringed Taylor's right of self-representation by permitting counsel appointed by the court to participate in the trial over Taylor's objection.

The facts underlying Taylor's claim are as follows: Following the court's pretrial ruling that Daly would not be allowed to represent Taylor at trial, the court inquired of Taylor whether he intended to retain duly licensed counsel or wished to have the court appoint an attorney to act on his behalf. Taylor responded that, although he felt unqualified to represent himself in the proceedings, he had no intention of securing licensed counsel and did not request that counsel be appointed for him. After determining that Taylor was validly

waiving his right to the assistance of counsel and asserting his right to represent himself, the court then ruled that, in view of Taylor's statement that he believed himself unqualified to defend himself at trial, counsel would be appointed to serve as an adviser to the defendant and charged with the additional responsibility of seeing to it that all of the facts favorable to the defendant would be brought out at trial. Accordingly, standby counsel was appointed over the defendant's objection that the court had no right to force an attorney upon him in view of his right to represent himself under *Faretta*.

On the morning of the first day of trial, Taylor renewed his request that Daly be allowed to represent him and reiterated his objection to the court's appointment of counsel. The court restated its position that the Sixth Amendment gave Taylor no right to representation by unlicensed counsel and then inquired whether Taylor intended to present an opening statement or cross-examine any of the Government's witnesses. Taylor replied that he was not qualified to do that but "neither do I want [standby counsel] doing that." He declared that, because he had been denied Daly's assistance and felt unqualified to act on his own behalf, he intended to take no part in the trial proceedings and to object strenuously to appointed counsel's taking any action on his behalf.

In view of Taylor's objection to standby counsel's participation in the trial, the district court initially barred appointed counsel from cross-examining witnesses and required that any objections raised by counsel be registered at a bench conference outside the hearing of the jury. Gradually, however, as it became clear that Taylor would in fact take no part in the proceedings, the district court lifted the restrictions imposed on appointed counsel's participation. By the end of the trial, counsel was allowed to cross-examine witnesses and register objections freely at counsel's table, and to make a closing statement to the jury regarding the evidence presented by the Government.

Taylor was not inhibited in any way from conducting his own defense as he saw fit. Indeed, whenever he was invited to participate in the trial, he would simply reiterate his position that he was being denied his constitutional right to counsel of his choice and that he objected to appointed counsel's efforts on his behalf.

On appeal, Taylor again relies on *Faretta v. California*, 422 U.S. 806 (1975), in support of his claim that the district court infringed his right of self-representation by appointing standby counsel and allowing him to participate in the trial over Taylor's objection.

We recognize that *Faretta* holds that an accused has a constitutional right to dispense with the assistance of counsel and to conduct his defense personally. It does not inevitably follow, however, that this right of self-representation comprehends any correlative right to preclude the trial court from appointing counsel and authorizing him to participate in the trial over the accused's objection in order to protect the public interest in the fairness and integrity of the proceedings.[2] Indeed,

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[2] As Mr. Chief Justice Burger noted in *Mayberry v. Pennsylvania*, 400 U.S. 455, 467-68 (1971) (concurring opinion),

> "When a defendant refuses counsel . . . or seeks to discharge him, a trial judge is well advised—as so many do—to have such 'standby counsel' to perform all the services a trained advocate would perform ordinarily by examination and cross-examination of witnesses, objecting to evidence and making closing argument. No circumstance that comes to mind allows an accused to interfere with the absolute right of a trial judge to have such 'standby counsel' to protect the rights of accused persons 'foolishly trying to defend themselves,' as Mr. Justice Douglas so aptly described it. In every trial there is more at stake than just the interests of the accused; the integrity of the process warrants a trial judge's exercising his discretion to have counsel participate in the defense even when rejected. A criminal trial is not a private matter; the public interest is so great that the presence and participation of counsel, even when opposed by the accused, is warranted in order to vindicate the process itself."

insofar as Taylor suggests that the mere appointment of standby counsel over his objection infringed his right of self-representation, his argument is frivolous in view of the Court's statement in *Faretta* that

> "a State may—even over objection by the accused—appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." 422 U.S. at 835 n.46, citing *United States v. Dougherty*, 473 F.2d 1113, 1124-26 (D.C. Cir. 1972).

To be sure, it may be argued that, by expressly approving only the limited "standby" role noted above, the Court was implying that any action taken by appointed counsel over the objection that counsel was interfering with the defense presented by the accused might well constitute an infringement of the accused's right of self-representation. However, even if we read the Court's statement as containing such a negative implication[3] and assume *arguendo* that the right of self-representation includes the right to preclude appointed counsel from interfering with the accused's presentation of his own defense, we would still conclude that Taylor's right of self-representation was not infringed in the circumstances of this case. The fact of the matter is that Taylor was allowed to present his own defense as he saw fit, and that appointed counsel's participation in the trial did not in any manner impinge upon or undercut the defense (if it may be called such) presented by Taylor. As the district court observed in its memorandum

[3] In view of the *Faretta* Court's approving citation of *United States v. Dougherty*, 473 F.2d 1113, 1124-26 (D.C. Cir. 1972), it is not at all clear the Court meant that appointed counsel was constitutionally relegated to only a "standby" role. In *Dougherty*, after all, the District of Columbia Circuit had expressly approved of appointed counsel's serving both as a "standby" adviser to a pro se defendant and as a friend of the court authorized to act independently of the accused in order to protect his rights in the interests of justice. See 473 F.2d at 1125 & nn. 18-19.

opinion denying Taylor's post-trial motions, his refusal to take part in the proceedings and objection to appointed counsel's participation was simply a protest over the court's refusal to allow Jerome Daly to represent him. We think the district court's observation is fully supported by the record, which makes clear that Taylor's objections to appointed counsel's efforts were not based on any substantive or tactical considerations but solely on the ground that counsel was not the man of Taylor's choice. Under the circumstances, it cannot be said that appointed counsel's participation in the trial interfered with Taylor's right to present his own defense personally, which the essence of the right to self-representation enunciated in *Faretta*.

Accordingly, we hold that, in the peculiar circumstances of this case, where the accused was not inhibited in any manner from presenting his own defense, openly acknowledged his inability to defend himself, and chose to take no part in the proceedings in protest over the district court's refusal to allow an unlicensed friend to represent him, the court did not infringe his right to self-representation by appointing standby counsel and authorizing counsel over the accused's objections to participate in the trial in a manner that did not interfere with the accused's presentation of his own defense.

V.

Taylor next argues that the district court committed reversible error by informing the jury that Taylor had asked to be represented by a "disbarred attorney." According to Taylor, the district court's comment was a blatant effort to cast the defendant in a bad light before the jury and thus to prejudice their deliberations. We disagree.

Viewed in its context, the court's reference to the fact that Taylor had asked to be represented "by one Jerome Daly, who is not licensed to practice law and may in fact be a disbarred lawyer," was a timely and proper response to one of Taylor's periodic outbursts in which

he complained that he was unfairly being denied the assistance of his friends in conducting his defense. In response, the court had every right to explain to the jury that Taylor had asked to be represented by unlicensed counsel, and that the rules of court did not allow for such representation. Under the circumstances, we do not believe that the court erred in referring to the possibility that Daly had been disbarred from the practice of law in the course of explaining to the jury the reasons why Daly had not been allowed to appear on behalf of Taylor. The record makes clear that no prejudice was intended, and we cannot conceive how any resulted from the court's remarks.

VI.

Taylor finally argues that the court erred in refusing him permission to address the jury to refute allegedly prejudicial statements contained in a local newspaper story printed in the course of the trial. The story, which recited various security measures taken for the Taylor trial, also included statements that Taylor "reportedly was arrested with some weapons in his possession" and "allegedly destroyed his patient records when he was indicted." Out of the presence of the jury, Taylor asked the court's permission to make a statement to the jury concerning the article. The court denied Taylor's request, as well as standby counsel's motion for a mistrial and request that the court determine if any of the jurors had read the article. Taylor, who had objected to standby counsel's motions, assigns as error on appeal only the district court's refusal to allow him to address the jury for the purpose of refuting the offensive statements.

We think the district court properly refused Taylor permission to address the jury for the purpose of refuting the prejudicial accusations contained in the newspaper story. Taylor's request was self-defeating, for any effort to refute the charges would necessarily have entailed revealing their substance to the jury. As it was, there was no reason to suppose that any of the jurors had read the article, for the court had on a number of

occasions specifically instructed the jury not read or listen to any references to the case that found their way into the media. Under the circumstances, to adopt Taylor's proposed "cure" would have been to guarantee infection with the very disease from which Taylor sought to deliver the jurors.

We find more troubling, however, the court's refusal to grant standby counsel's request that the court voir dire the jury to determine whether any of the jurors had in fact read or been exposed to the prejudicial article. We recognize that Taylor himself objected to counsel's request, and that the Government was about to put in evidence of Taylor's destruction of patient records. Nevertheless, the article's statement that Taylor was reportedly armed at the time of arrest, even if true, had no relevance to the issues at trial and had the potential for casting the defendant in a bad light before the jury. Accordingly, we think it would have been advisable to ask the jurors collectively whether any of them had seen any references to the trial in the paper, so that the court could satisfy itself that the jurors had not in fact been exposed to the story. See *Margoles v. United States*, 407 F.2d 727, 732-35, (7th Cir. 1969). Notwithstanding the above, we do not believe the court committed plain error affecting the substantial rights of the defendant by not inquiring whether any of the jurors had read the offensive article. The trial court, after all, had firmly and repeatedly admonished the jury during the course of the trial not to read or listen to any news coverage of the case, and the publicity involved here, although potentially damaging, did not make reference to any evidence strongly probative of the defendant's guilt that had been previously suppressed by the court as was the case in *United States v. Thomas*, 463 F.2d 1061, 1063 (7th Cir. 1972).

Accordingly, for the reasons noted below, the judgment of the district court is

AFFIRMED

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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